

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

9620

B-194084

FILE:

DATE: March 28, 1979

MATTER OF: Local F76, International Association of
Firefighters

DIGEST:

1. February 6, 1979, protest alleging that Air Force base erred in contracting out services by awards of contracts on October 1, 1978, is untimely under GAO Bid Protest Procedures.
2. [Protest by union local] that services being performed in-house should not be contracted out is not for consideration. Provisions of OMB Circular A-76 are matters of Executive policy which do not establish legal rights and responsibilities and which are not within protest decision function of GAO.

By letter to our Office dated February 3, 1979, Local F76 of the International Association of Firefighters protested several procurement actions at Richards-Gebaur Air Force Base, Missouri. The local apparently represents Federal workers employed as firefighters at the base.

Initially, Local F76 objects to the award of contracts for certain support services on October 1, 1978, alleging principally that the provisions of Office of Management and Budget (OMB) Circular No. A-76, with regard to making determinations to contract-out services, were not followed, and the decision was made at a time when there was a moratorium on contracting out under Public Law 95-111, which expired by October 1, 1978. Local F76 was aware of this procurement action in July, 1978. In this regard, under section 20.2 of our Bid Protest Procedures, 4 C.F.R. Part 20 (1978), protests based upon apparent solicitation improprieties must be filed prior to bid opening or the closing date for receipt of proposals, and all other protests

*Procedures on
protest's evaluation
Service contracts
Contracting procedure
Conflict of interest*

AGC 89

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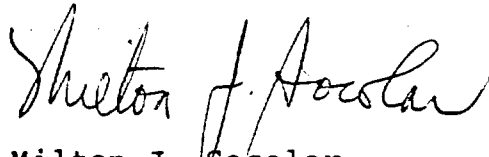
must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. The present protest, filed with our Office on February 6, 1979, is accordingly untimely and not for consideration.

Local F76 also objects to a current procurement for base support services in which proposals are to be received in March 1979. The protester doubts that a fair comparison of the costs of contracting-out versus in-house performance is possible, alleging that a retired Air Force officer, the former base commander, was involved in prior cost studies of contracting-out and is now employed by one of the prospective contractors. Local F76 believes that the retired officer may be violating applicable laws and Air Force regulations concerning conflict of interest, and alleges in effect that his employer enjoys an unfair competitive advantage in the procurement.

The gravamen underlying the protest appears to be the protester's belief that job positions being contracted-out should be retained by Civil Service employees. Although it alleges an unfair competitive advantage on the part of the employer of the retired officer in the ongoing procurement, the protester is essentially seeking our review of the basic decision to contract-out in the first place. Our Office does not consider protests concerning the propriety of an agency's determination under OMB Circular A-76 to contract-out as opposed to performing work in-house. We regard the provisions of the Circular as matters of Executive policy, which do not establish legal rights and responsibilities and which are not within the protest decision function of our Office. See National Federation of Federal Employees, B-187838, November 26, 1976, 76-2 CPD 451; American Mutual Protective Bureau, B-190563, March 22, 1978, 78-1 CPD 226.

Finally, it is contended that the retired base commander at Richards-Gebaur Air Force Base may have violated 37 U.S.C. § 801(c) (1976), which concerns sales by retired regular officers to the Government and 18 U.S.C § 281 (1976), which is a criminal statute. However, we note that the first statute relates to sales of supplies or war materials, and does not appear to be applicable to the service contracts involved here. The information submitted in connection with the alleged violation of the criminal statute is not sufficient for our Office to make a judgment. In any event, the investigation of alleged criminal violations and enforcement of criminal statutes is the prerogative of the Department of Justice and, therefore, any allegations in this respect should be referred to it.

The protest is dismissed.



Milton J. Socolar
General Counsel